Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

General Teamsters, Local Union No. 362,

applicant,

and

Reimer Express Lines Ltd., doing business as YRC Reimer,

respondent.

Board File: 28574-C
Neutral Citation: 2011 CIRB **585**
April 29, 2011

The Canada Industrial Relations Board (Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. John Bowman and David P. Olsen, Members.

Counsel of record

Mr. Clayton H. Cook, for the General Teamsters, Local Union No. 362;

Mr. Michael Horvat, for Reimer Express Lines Ltd., doing business as YRC Reimer.

These reasons for decision were written by Graham J. Clarke, Vice-Chairperson.

[1] Section 16.1 of the *Canada Labour Code* (*Part I - Industrial Relations*) (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine this matter without an oral hearing.

I–Nature of the Complaint

[2] On February 4, 2011, the Board received an unfair labour practice (ULP) complaint and an application for an illegal lockout declaration from the General Teamsters, Local Union No. 362 (Teamsters). The Teamsters argued that Reimer Express Lines Ltd., doing business as YRC Reimer (Reimer) had violated *Code* section 50 (both the freeze provision and the obligation to bargain in good faith), section 94(1)(*a*) (interference) as well as section 92 (illegal lockout).

[3] The parties' main area of dispute arose from a Letter of Understanding (LOU) they negotiated during the term of the collective agreement. That LOU confirmed, *inter alia*, employee wage concessions and suspended Reimer's obligation to make pension fund contributions. The parties disputed whether the LOU remained in effect after the expiration of the collective agreement and during the statutory freeze.

[4] Reimer disputed the Teamsters' allegations, but also asked the Board to dismiss the complaints pursuant to section 98(3) of the *Code* and to send them to arbitration under the collective agreement.

[5] The Board has decided, pursuant to *Code* section 16 (*l*.1), to defer hearing this case. The essence of this dispute arises from the interpretation of the parties' LOU. An arbitrator may resolve virtually all the issues which separate the parties. The Teamsters have already filed a policy grievance. Following arbitration, and at the parties' request, the Board will consider what steps, if any, remain.

II–Facts and Parties' Positions

[6] The Teamsters represent the following 39-person bargaining unit at Reimer:

> all employees of Reimer Express Lines Ltd., employed at its Edmonton terminal excluding mechanics, foreman, persons above the rank of foreman, office, sales and clerical staff, owner operators and highway drivers.

[7] The Teamsters and Reimer concluded a collective agreement with a term commencing April 5, 2005 and expiring March 31, 2010.

[8] On September 30, 2009, the Teamsters and Reimer negotiated the LOU that is at the heart of their dispute. The LOU resulted from challenging business conditions facing Reimer.

[9] The LOU purported to extend the term of the collective agreement by a period of nine months from March 31, 2010 to December 31, 2010.

[10] Under the LOU, the Teamsters agreed to various things, including a wage concession of $0.33 an hour and the suspension of Reimer's pension remittances. The parties disagree about the meaning and application of the following provision (Revert Clause) in the LOU:

> All terms and conditions, except for the expiry date, shall revert to those basic terms and conditions contained within the collective agreement entered into September 15, 2006 and expiring on March 31, 2010.

[11] After December 31, 2010, Reimer continued to pay the employees at the reduced rate set out in the LOU. It also did not make any contributions to the Prairie Teamsters Pension Plan.

[12] The Teamsters argued that Reimer failed to respect the LOU's Revert Clause which allegedly obliged it to start applying the pre-LOU terms and conditions of employment. In support of their position, the Teamsters referred to a February 1, 2011 letter from Reimer which stated, *inter alia*:

> During the last set of negotiations that resulted in the MOA that expired December 31, 2010, there was a commitment between the parties to conclude these current negotiations for a new agreement commencing January 1, 2011 "PRIOR" to December 31, 2010.
>
> In keeping with that intent, we will be holding any changes originally scheduled for January 1, 2011 in abeyance and defer any changes after December 31, 2010 to the current set of negotiations.
>
> ...

[13] In Reimer's submission, it maintained the same terms and conditions of employment as existed just prior to the commencement of the freeze at section 50(b) of the *Code*. It argued the parties intended when they negotiated the LOU that those conditions would remain in place until a new collective agreement had been negotiated.

[14] On February 1, 2011, the Teamsters filed a policy grievance alleging Reimer had failed to pay the rates of pay and pension contributions required by the collective agreement.

[15] Reimer asked the Board to reject the Teamsters' complaint and apply section 98(3) of the *Code* given that the same issue was before a labour arbitrator:

> 97. (1) Subject to subsections (2) to (5), any person or organization may make a complaint in writing to the Board that
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> (*a*) an employer, a person acting on behalf of an employer, a trade union, a person acting on behalf of a trade union or an employee has contravened or failed to comply with subsection 24(4) or 34(6) or section 37, 47.3, 50, 69, 87.5 or 87.6, subsection 87.7(2) or section 94 or 95; or
>
> (*b*) any person has failed to comply with section 96.
>
> ...
>
> 98. (3) The Board may refuse to determine any complaint made pursuant to section 97 in respect of a matter that, in the opinion of the Board, could be referred by the complainant pursuant to a collective agreement to an arbitrator or arbitration board.
>
> (emphasis added)

[16] The Teamsters argued that the Board cannot exercise its power to dismiss under section 98(3) since their illegal lockout application was filed under section 92 of the *Code*, *infra*, rather than section 97. In the alternative, the Teamsters asked the Board to exercise its jurisdiction on the basis that it is best suited to determine these matters, even if an arbitrator might have concurrent jurisdiction when it comes to interpreting the collective agreement.

[17] The Teamsters further argued that Reimer's action constituted a violation of the freeze:

> The Board should have no hesitation in finding that a refusal to pay the employees in the bargaining unit in accordance with the Collective Agreement (ie. Reinstate the pre-extension rates) is a violation of section 50(b) of the *Code*.

[18] Section 50(b) states:

> 50. Where notice to bargain collectively has been given under this Part,
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> ...
>
> (*b*) the employer shall not alter the rates of pay or any other term or condition of employment or any right or privilege of the employees in the bargaining unit, or any right or privilege of the bargaining agent, until the requirements of paragraphs 89(1)(*a*) to (*d*) have been met, unless the bargaining agent consents to the alteration of such a term or condition, or such a right or privilege.

[19] The Teamsters further pleaded that an unlawful lockout had taken place. In their view, the definition of lockout in the *Code* could include a "unilateral alteration to the terms and conditions of employment" which is how they characterize Reimer's current application of the collective agreement. They allege Reimer sought to compel employees to agree to its offer for a new collective agreement.

[20] The *Code* defines a lockout as follows:

> 3. (1) In this Part,
>
> ...
>
> "lockout" includes the closing of a place of employment, a suspension of work by an employer or a refusal by an employer to continue to employ a number of their employees, done to compel their employees, or to aid another employer to compel that other employer's employees, to agree to terms or conditions of employment...

[21] Section 92 of the *Code* deals with an application for a declaration of unlawful lockout:

> 92. Where a trade union alleges that an employer has declared or caused or is about to declare or cause a lockout of employees in contravention of this Part, the trade union may apply to the Board for a declaration that the lockout was, is or would be unlawful and the Board may, after affording the employer an opportunity to make representations on the application, make such a declaration and, if the trade union so requests, may make an order
>
> (*a*) enjoining the employer or any person acting on behalf of the employer from declaring or causing the lockout;
>
> (*b*) requiring the employer or any person acting on behalf of the employer to discontinue the lockout and to permit any employee of the employer who was affected by the lockout to return to the duties of their employment; and

(*c*) requiring the employer forthwith to give notice of any order made against the employer under paragraph (*a*) or (*b*) to any employee who was affected, or would likely have been affected, by the lockout.

[22] The Teamsters rely on the same facts to argue that Reimer interfered with the Teamsters' representational rights contrary to section 94(1)(*a*) of the *Code*. By not seeking the Teamsters' consent to maintain the status quo, Reimer is allegedly interfering with the union's representation rights:

94. (1) No employer or person acting on behalf of an employer shall

(*a*) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union...

[23] The Teamsters also suggested that Reimer failed to bargain in good faith under section 50(*a*) of the *Code*, but "due to time constraints the argument concerning section 50(*a*) will be addressed at the hearing only":

50. Where notice to bargain collectively has been given under this Part,

(*a*) the bargaining agent and the employer, without delay, but in any case within twenty days after the notice was given unless the parties otherwise agree, shall

(i) meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith, and

(ii) make every reasonable effort to enter into a collective agreement...

[24] Reimer summarized the collective bargaining meetings which had taken place with the Teamsters in the autumn of 2010 and in 2011. On January 15, 2011, Teamsters' members rejected Reimer's contract offer.

[25] By way of remedy, *inter alia*, the Teamsters asked for an unlawful lockout declaration as well as an order for Reimer to pay the wages and other entitlements based on the original collective agreement, as well as back pay.

III–Analysis and Decision

[26] The Board has the power to defer deciding certain matters that could be resolved by arbitration:

> 16. The Board has, in relation to any proceeding before it, power
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> ...
>
> (*l*.1) to defer deciding any matter, where the Board considers that the matter could be resolved by arbitration or an alternate method of resolution.

[27] Section 67 of the *Code* deals with collective agreements generally and section 67(2) deals explicitly with an agreement's term:

> 67.(2) Nothing in this Part prohibits the parties to a collective agreement from agreeing to a revision of any provision of the collective agreement other than a provision relating to the term of the collective agreement.
>
> (emphasis added)

[28] The Board directs the parties' attention to section 67(2) of the *Code* regarding agreements which seek to change the term of an existing collective agreement. If the Board at some later date is required to decide any of the matters raised, the Board may require the parties' comments on the relevance, if any, of section 67(2).

[29] The Board has considered the parties' submissions and is satisfied that all issues in dispute arise from the proper interpretation of the parties' collective agreement and LOU. That is something which generally falls within the domain of a grievance arbitrator, rather than a labour board. If there is ambiguity, then the negotiating history of the LOU may become relevant. An arbitrator is best situated to examine such questions.

[30] Given the facts and the parties' positions as summarized above, the Board is satisfied that it should exercise its discretion under section 16(*l*.1) to defer deciding this matter. Every issue pleaded in this case is based on the divergent views about how to interpret the collective agreement and, in particular, the Revert Clause in the LOU.

[31] The Board recently commented on when it may defer a matter under section 16(*l*.1) in *Trevor William Emile Rees*, 2010 CIRB 499:

> [17] On the same date that section 60(1.1) was added to the Code, the Legislator also added section 16(*l*.1):
>
> 16. The Board has, in relation to any proceeding before it, power
> ...
> (*l*.1) to defer deciding any matter, where the Board considers that the matter could be resolved by arbitration or an alternate method of resolution.
>
> [18] Section 16(*l*.1) does not authorize the Board to dismiss Mr. Rees' complaint. In this respect, it differs significantly from section 98(3) of the Code:
>
> 98(3) The Board may refuse to determine any complaint made pursuant to section 97 in respect of a matter that, in the opinion of the Board, could be referred by the complainant pursuant to a collective agreement to an arbitrator or arbitration board.
>
> [19] Section 16(*l*.1) allows the Board to put its matter on hold while another possible more appropriate labour relations proceeding takes place.
>
> [20] The Legislator added section 16(*l*.1) for just this type of case. Mr. Rees' discharge grievance is proceeding before an arbitrator. The arbitrator has the authority under section 60(1.1) of the Code to consider whether to extend the collective agreement's time limits and hear the merits of Mr. Rees' grievance.
>
> [21] The Board prefers not to preempt the arbitrator. More importantly, while the arbitrator will consider the simple question of whether to extend time limits, the case before the Board is more complex. Stated succinctly, this case involves a determination whether a bargaining agent's failure to observe a collective agreement time limit constitutes a violation of the duty of fair representation.

[32] The Board is satisfied that an arbitrator will be able to decide if there has been, in fact, a breach of the collective agreement. That will be relevant to the Teamsters' unlawful lockout application. Similarly, depending on the arbitrator's decision, it may become evident whether there has been a violation of the statutory freeze.

[33] The consideration of whether Reimer interfered with the Teamsters' representation rights under section 94(1)(*a*) will also hinge to some degree on the arbitrator's decision.

[34] In the Board's view, depending on which way the arbitrator decides this interpretation question, every issue may be finally disposed of. Nonetheless, section 16 (*l*.1), which simply puts the Board's matter on hold, as opposed to dismissing it under section 98(3), allows the Board to remain seized of the disputes and to deal with them, if necessary, once an arbitrator has ruled.

[35] Given that the Teamsters have filed a policy grievance, this is the preferred way for the Board to handle this case. The Board prefers not to preempt an arbitrator who has the core jurisdiction to interpret the parties' collective agreement and ancillary documents like the LOU.

[36] This is a unanimous decision of the Board.

Graham J. Clarke
Vice-Chairperson

John Bowman
Member

David P. Olsen
Member